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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 28, 2003

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2003-00037

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Annual Audited
Financial Reports

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance (the "Bureau") has submitted to the Commission proposed revisions to Chapter 270 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Annual Audited Financial Reports," which amend the rules at 14 VAC 5-270-40 and 14 VAC 5-270-80.

The revisions proposed for 14 VAC 5-270-40 add a definition for "indemnification." The revisions proposed for 14 VAC 5-270-80, concerning the qualifications of accountants, prohibit indemnification, but allow certain mediation and arbitration agreements.

The Commission is of the opinion that the proposed revisions submitted by the Bureau should be considered for adoption with an effective date of July 1, 2003.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Annual Audited Financial Reports," which amend the rules at 14 VAC 5-270-40 and 14 VAC 5-270-80, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before May 23, 2003, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2003-00037.

3) If no written request for a hearing on the proposed revisions is filed on or before May 23, 2003, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission

to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with the attached proposed revisions, to all insurers, burial societies, fraternal benefit societies, health services plans, health maintenance organizations, legal services plans, and dental or optometric services plans licensed by the Commission.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached proposed revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) On or before March 7, 2003, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

CHAPTER 270.

RULES GOVERNING ANNUAL AUDITED FINANCIAL REPORTS

14 VAC 5-270-40. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Accountant" and "independent Certified Public Accountant" mean an independent, certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants ("AICPA") and in all states in which such accountant or firm is licensed to practice; for Canadian and British companies, they mean a Canadian-chartered or British-chartered accountant.

"Audited Financial Report" means and includes those items specified in 14 VAC 5-270-60.

"Commission" means the State Corporation Commission when acting pursuant to or in accordance with Title 38.2 of the Code of Virginia.

"Due date" means (i) June 1 for all domestic insurers, ~~and~~ (ii) June 30 for all foreign or alien companies domiciled or entered through a state in which similar law, regulation or administrative practice provides for a June 30 filing date, ~~or~~ and (iii); for all other insurers, the earlier of June 30 or the date established by the insurer's state of domicile or entry for filing similar audited financial reports.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

"Workpapers" means the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the accountant in the course of the examination of the financial statements of an insurer and which support the accountant's opinion thereof.

14 VAC 5-270-80. Qualifications of accountant.

A. The commission shall not recognize ~~any~~ a person or firm as a qualified accountant ~~that is~~ if that person or firm:

1. Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

2. Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

B. Except as otherwise provided ~~herein~~ in this chapter, the commission shall recognize an independent Certified Public Accountant ~~shall be recognized~~ as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Conduct of the AICPA and the Rules and Regulations, including the Standards of Practice, of the Virginia Board of Accountancy or similar code.

C. A qualified independent Certified Public Accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Chapter 15 (§ 38.2-

1500 et seq.) of Title 38.2 of the Code of Virginia, the mediation or arbitration provisions shall operate at the option of the statutory successor.

D. No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service, such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commission for relief from the above rotation requirement on the basis of unusual circumstances. The commission may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer; or
3. Number of jurisdictions in which the insurer transacts business.

~~D.~~ E. The commission shall not recognize as a qualified accountant, nor accept any annual Audited Financial Report prepared in whole or in part by, any person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act (18 USC §§ 1961-1968) or any dishonest conduct or practices under federal or state law;
2. Has violated the insurance laws of this Commonwealth with respect to any previous reports submitted under this chapter; or
3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.

~~E.~~ F. The commission may (i) make a determination as to whether an accountant is qualified and may, based upon the facts considered, determine that such accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual Audited Financial Report made pursuant to this chapter and (ii) require the insurer to replace such accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.